IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8020 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANJIBHAI P. BAROT

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

MR PREMAL JOSHI, AGP, for the respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 17/03/2001

ORAL JUDGEMENT

The petitioner has challenged the legality and validity of the action of the respondents, denying the retiral benefits on the basis of actual date of retirement being 13.4.88 on the ground that it is unjust, arbitrary and illegal, by filing this petition under Article 226 of the

Constitution of India.

The petitioner was appointed as Police Constable with effect from 14.9.1948. His birthdate, as per the record was 14.9.23, in the service book. He was promoted to the post of Head Constable in the year 1958 and further to the post of PSI in the year 1977. He was, however, reverted to the post of Head Constable-Grade I in the year 1978. He was informed by the respondent authority by letter dated 13.4.81 that he would be retired from service on superannuation as per his birth date with effect from 30.9.81.

The petitioner had requested the authority to correct his birth date from 14.9.23 to 22.2.32. He contended that there was mistake with regard to his birth date in the service record. Since no positive action or response was taken, the petitioner had filed Regular Civil Suit No.702 of 1981 for declaration and injunction that the date of birth of the petitioner was 22.2.32 and that he would be entitled to continue in service accordingly, till February 1990. He got interim relief from the Civil Court and continued in service under the interim order of the Court till 13.4.88, even after the superannuation age as per the original birth date recorded in the service book. The suit was, ultimately, dismissed.

The respondent authority fixed the retiral and pensionary benefits of the petitioner on the basis that the petitioner had retired, with effect from 30.9.81, and, accordingly, pensionary benefits also came to be computed. The contention of the petitioner has been that his retiral benefits should have been fixed on the basis of actual service and not on the basis of retirement on 30.9.81 as per the birth date recorded in the service book. By this petition, therefore, the petitioner has sought relief that the respondent authority should be directed to release all the retiral benefits by computing the same on the basis of the last salary drawn by the petitioner in the month of April 1988, which is, seriously, disputed by the respondent authority.

In view of the admitted facts and the settled proposition of law, the original petitioner cannot be given the pensionary benefits on the basis of his actual retirement instead of retirement on the basis of birth date recorded in the service book. He continued in service beyond 30.9.81 till 13.4.88 on the basis of the interim order of the Court and received actual salary instead of pension. The plea to correct the birthdate raised in the civil Court in civil suit came to be decided against the

original petitioner. Apart from that, merely on the basis of interim relief, the petitioner cannot be permitted to avail the unwarranted and undue benefits. In the opinion of this Court, this petition is without any merits and deserves to be rejected. Therefore, this petition shall stand rejected. Rule discharged leaving the parties to bear their own costs. Before parting, it would be appropriate to observe that in case, after the unfortunate demise of the original petitioner, during the pendency of this petition, family pension is not fixed, the authority will take immediate appropriate action for fixing it so that heirs can reap the benefits of family pension.

(J.N.Bhatt, J.)
(vjn)